

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 70-27
BWX TECHNOLOGIES, INC.)	License No. SNM-42
LYNCHBURG, VA)	EA-04-070

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I.

BWX Technologies, Inc. (BWXT) is the holder of Special Nuclear Material License SNM-42 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the operation of Category I Fuel Cycle facilities in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70. BWXT is required to comply with physical security requirements in accordance with 10 CFR Part 73.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a facility. The Commission also conducted a comprehensive review of its safeguards and security programs and requirements. On August 21, 2002, the Commission issued Orders to BWXT to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which

have emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, local government agencies, and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities.

Demands on licensee security force personnel have increased substantially since the September 11, 2001, attacks, and the current threat environment continues to require heightened security measures. The Commission has determined that the enclosed additional security measures are required to be implemented by BWXT as prudent measures to address issues that may arise from work-hour related fatigue of security force personnel. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 of this Order, on BWXT. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected. These requirements will remain in effect until the Commission determines otherwise.

In order to provide assurance that BWXT is implementing prudent measures to achieve a consistent level of protection, Special Nuclear Materials License SNM-42 shall be modified to include the requirements in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, the NRC finds that in the circumstances described above, public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 70 and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT SPECIAL NUCLEAR MATERIALS LICENSE SNM-42 IS MODIFIED AS FOLLOWS:

- A. BWXT shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the licensees' security plans. BWXT shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation **no later than [insert date 180 days from the date of issuance]**.
- B.
 - 1. BWXT shall, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide BWXT justification for seeking relief from or variation of any specific requirement.
 - 2. If BWXT considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of the facility, BWXT must notify the Commission, within **twenty (20) days** of this Order, of the

adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

- C.
 - 1. BWXT shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.
 - 2. BWXT shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.
- D. Notwithstanding the provisions of 10 CFR 70.32(g), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

BWXT's responses to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety & Safeguards, may, by letter, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV.

In accordance with 10 CFR 2.202, BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety & Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety & Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator, NRC Region II; and to BWXT if the answer or hearing request is by a person other than BWXT. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than BWXT requests a hearing, that person shall set forth with particularity the

manner in which the individual's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by BWXT or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Jack R. Strosnider, Director
Office of Nuclear Material Safety & Safeguards

Dated this day of

Attachment: 1. Additional Security Measures